

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

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ROBERT TURBEN  
DOC #982329

Plaintiff[s],

V

COMPLAINT

3:19-cv-141

Case No: \_\_\_\_\_

ROBERT CARTER D/B/A Commissioner  
Indiana Department of Corrections

**JURY TRIAL DEMAND**

RON NEAL, Superintendent- Indiana State Prison

WEXFORD OF INDIANA LLC. (Corporation)

NANCY MARTHAKIS M.D.

NURSE(S) employed by WEXFORD OF INDIANA LLC.  
identified as; 'Lacey', 'Dan' 'Michelle' &  
'Elizabeth' (Failure(s) to Identify)  
Et Al.

Defendant(s),

Each defendant is being sued **individually** and in his [or her] **official capacity**. At all times mentioned in this complaint each defendant acted under **color of state law**.

**I. JURISDICTION & VENUE**

1. This is a civil action authorized by 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. § 1331 and 1343(a) (3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. § 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. § 2283 and 2284 and Rule 65 of the Federal Rules of Civil procedure.

2. The South Bend District is an appropriate venue under 28 U.S.C. § 1391 (b) (2) because it is where the events giving rise to this claim occurred.

## II. PLAINTIFF

3. Plaintiff, **Robert Turben**, is and was at all times mentioned herein a prisoner of the State of Indiana in the custody of the Indiana Department of Corrections. He is currently confined in Indiana State Prison, One Park Row, Michigan City, IN 46360.

## III. DEFENDANT(S)

4. Defendant, **Robert Carter** is the Commissioner of the State of Indiana Department of Corrections. He is legally responsible for the overall operation of the department and each institution under its jurisdiction, including Indiana State Prison.
5. Defendant **Ron Neal**, is the Indiana State Prison Superintendant of the Indiana Department of Correction (IDOC). He is legally responsible for the operation of Indiana State Prison and for the welfare of all the inmates in that prison.
6. Defendant, **WEXFORD OF INDIANA LLC** is a Limited Liability Corporation who beginning (circa) May 01, 2017 took over the contractual obligation to provide and assist with medical treatment to prisoners at the Indiana State Prison specifically where the Plaintiff is currently domiciled.
7. Defendant, **Nancy Marthakis** is a Doctor of Medicine who, at all times mentioned in this complaint, held the rank of M.D. and is currently employed by Wexford of Indiana LLC which is sub-contracting to provide medical services for prisoners at the Indiana State prison in Michigan City, Indiana. Dr. Marthakis has a sacred duty under oath to 'do no harm'.
8. Defendant(s) cursorily named herein are tentatively identified as **NURSE(S)** employed by **WEXFORD OF INDIANA LLC**. Names identified as; '**Lacey**', '**Dan**' '**Michelle**' & '**Elizabeth**' (i.e. These Defendant(s) have refused to identify themselves to the Plaintiff) Et Al.

#### IV. FACTS

9. Plaintiff wishes the following narrative to be construed liberally pursuant to the ruling in *Haines v. Kerner* 404 US 519, 92 S.Ct. 594, reh'g denied 405 US 948, 92 S.Ct. 963 (1972) ("The United States Supreme Court holds allegations of a 'pro se' complaint to less stringent standards than formal pleadings drafted by lawyers.")

On December 15, 2017 I hurt my right foot. It swelled and turned blue. I went to Wexford medical<sup>1</sup> at Indiana State prison and was told I would be sent to see the medical provider. After 19 days I was still not seen by anyone from Wexford medical. My unit team manager Ms. Buss called Wexford medical and told them again I was hurt and needed to be seen. January 3, 2018 I was seen by Dr. Nancy Marthakis. I told the medical staff I had been icing my foot and that I had a great deal of pressure on my big toe on my right foot. I was on crutches till February 2018 at which time the crutches was taken away with the explanation that prolonged use of crutches would cause cysts under my armpits. At no time did Wexford look to see if I had a callus under my arms. I could still not put any pressure on the front of my foot. I had to walk on the 'heel' of my foot. I made it 8 days before I could not take the pain any longer. The pain was so bad it made my ears ring. I was put back on crutches for 21 days, and then Wexford took the crutches again stating prolonged use of crutches would cause cysts under my arms. After Wexford took the crutches again, I made it 6 days before I hurt my foot again. I was again given crutches to move around at that time. Wexford kept giving me X-rays. On May 7, 2018 Wexford found a split in my big toe "*Bi-partite Sesamoid Bone*". Nothing was said to me about that till October 2018. I did not find out till I seen a physical therapist from Wexford October 24, 2018.

On May 15, 2018 Wexford changed my insulin. After I explained to Wexford, that I had already been put on the insulin that they wanted to put me on, I had a lot of trouble and my body would not accept that insulin. Wexford

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<sup>1</sup>Wexford of Indiana LLC

changed my insulin anyway. After 6 weeks with high finger sticks my body was having trouble. I was not able to keep anything down, no food or water would stay down. July 2018 I was sent to St. Anthony's hospital from ISP at which time I was put in ICU. I was put on an insulin drip, I V saline, and potassium I V. After 4 days of this I was sent back to ISP and was given a recommendation by the Medical Doctors at St. Anthony's to change my insulin. Wexford kept me on the same insulin for 3 more days; my body still would not accept the other insulin. I was sent back to St. Anthony's for a second time in ten days. I was put back on 70/30 insulin after being sent back to St. Anthony's and the Dr. from St. Anthony's sent another recommendation to change my insulin for the second time.

It seems that after I started the grievance process against Wexford, Wexford started to change things on the medical treatments I was receiving. February 27, 2018 Wexford took me off of the drug neurotins. I was taking 1600 mg Am and 800 mg Pm. Wexford stated that on February 11, 2018 I did not take my meds in front of the medical staff at the drug room window. Even though there is a camera right outside the drug room door and I was on crutches so I could not use two hands for the medication Wexford states I did not take my medication. DOC policy states I am to take medication in front of medical staff or be taken off said medication. Pam Williams said I did not take medication, Mrs. Williams waited 11 days to chart on the supposed incident. I was not given due process for any grievance process because Wexford did not follow DOC guidelines for me to respond. Wexford was trying to give an anti-depressant Pamalor for the pain in my foot. I tried to take the Pamalor to see if it would help, it did not. I was having nightmares and at times I could not tell what was real or not, I was dreaming of killing people. When I told Wexford what the medication was doing to me, the response was they would up the dosage if I wanted them too. I am in pain every day. Nothing seems to help that I can get off of commissary. Wexford still has not sent me to see a Podiatrist.

#### V. EXHAUSTION OF LEGAL REMEDIES

10. Plaintiff Robert Turben used the prisoner grievance procedure available at Indiana State prison to try and solve the problem. On February 13, 2018 plaintiff presented the facts relating to this complaint. On March 16, 2018 plaintiff was sent a response saying that the grievance had been denied. On April 9, 2018 he appealed the denial of the grievance. (See) **Attachment(s)**.

#### VI. LEGAL CLAIMS

11. The Plaintiff complains of violation(s) of due process, equal protection and deliberate indifference to medical needs, undue pain and suffering, and continual violations under the 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment(s) of the United States Constitution. The Defendant(s) violated plaintiff's rights and their actions have constituted cruel and unusual punishment, and violation(s) of both the due process and equal protection clauses (as named above).

12. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

#### VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this court enter judgment granting plaintiff:

13. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.

14. A preliminary and permanent injunction ordering defendants

ROBERT CARTER D/B/A Commissioner  
Indiana Department of Corrections

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to stop doing harm to the Plaintiff by the dispensation of  
inadequate and negligent medical treatment.

15. Compensatory damages in the amount of \$300,000.00 against  
each defendant, jointly and severally.

16. Punitive damages in the amount of \$900,000.00 against each  
defendant.

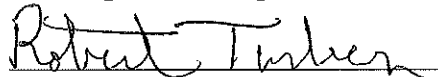
17. A jury trial on all issues triable by jury.

18. Plaintiff's costs in this suit upon documentation submitted  
to the court for ascertainment.

19. Any additional relief this court deems just, proper, and  
equitable.

Dated on this 28 day of February, 2019,  
2019.

Respectfully Submitted,



Robert Turben DOC# 982329  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360